

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ARLIN M. ADAMS, as Chapter 11  
Trustee of the Bankruptcy Estates of  
Coram Healthcare Corp. and Coram, Inc.  
and not individually,

Plaintiff,

V.

GENESIS INSURANCE COMPANY,

Defendant.

) Civil Action No. 1:06-cv-00364-SLR  
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) JURY TRIAL DEMANDED  
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**SUPPLEMENT TO BRIEF IN OPPOSITION TO GENESIS  
INSURANCE COMPANY’S MOTION TO DISMISS OR STAY**

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Plaintiff, Arlin M. Adams, Chapter 11 Trustee of the bankruptcy estates of Coram Healthcare Corporation and Coram, Inc. (the “Trustee”), hereby submits this supplement to his Brief in Opposition to Genesis Insurance Company’s (“Genesis”) Motion to Dismiss or Stay (the “Motion”) to advise the Court of a new development in the Colorado Action<sup>1</sup> that is highly relevant to the Motion.

On August 29, 2006, counsel for Defendant Genesis Insurance Company (“Genesis”) advised counsel for the Trustee, for the first time, that it is Genesis’ position that the underlying claims pending against Daniel D. Crowley (“Crowley”) in the D&O Action in this Court must be tried before certain of the issues raised by Genesis in the Colorado Action relating to insurance coverage for the Trustee’s claims against Crowley are decided. Genesis may not proceed with a declaratory judgment action if it would prejudice its insured in the underlying action. *See Constitution Assoc. v. Connecticut General Life Ins. Co.*, 930 P.2d 556 (Colo. 1996); *Hartford Ins. Co. v. District Court*, 625 P.2d 1013 (Colo. 1981).

Genesis’ recent concession that the Colorado Action cannot be fully and finally litigated until after the trial of the underlying D&O Action in this Court is at odds with its assertion that this case should be dismissed in favor of the Colorado Action because the “Colorado Action is moving rapidly toward trial.” (D.I. 6, p. 6.) Unlike the Colorado Action, this case does not include any claims relating to Crowley, but rather seeks payment of the amount of the Trustee’s settlement with Coram’s Outside Directors only. Thus, unlike the Colorado Action, this matter will not have to be stayed pending the trial in the D&O Action. Under these circumstances, it is clearly more expeditious to

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<sup>1</sup> Unless otherwise defined herein all capitalized terms shall have the same meanings ascribed to them in the Trustee’s Brief in Opposition to Genesis Insurance Company’s Motion to Dismiss or Stay (D.I. 7.)

adjudicate the Trustee's claims against Genesis relating to the Trustee's settlement with the Outside Directors in this case.

Dated: September 15, 2006

Respectfully submitted,

/s/ Michael J. Barrie

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## CERTIFICATE OF SERVICE

I, Michael J. Barrie, certify that I am not less than 18 years of age and that on September 15, 2006, I caused to be electronically filed with the Court the Supplement to Brief In Opposition to Genesis Insurance Company's Motion to Dismiss or Stay using CM/ECF, which will send notification of such filing to the following:

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Dated: September 15, 2006

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